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**BEFORE THE  
PHYSICAL THERAPY BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS**

**STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**ROBERT FRANK FORSTER**

1115 Pine Street  
Santa Monica, CA 90405

Physical Therapist License No. PT 10374

Respondent.

Case No. 1D 2000 62530,  
consolidated with Case No. 1D 2002  
62948

**A C C U S A T I O N**

Complainant alleges:

**PARTIES**

1. Steven K. Hartzell (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs (Board).

2. On or about May 14, 1981, the Board issued Physical Therapist License Number PT 10374, to Robert Frank Forster (Respondent). The Physical Therapist license was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2004, unless renewed.

## JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following sections of the Business and Professions Code (Code).



Section 2660 of the Code states, in pertinent part:

“The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon, or issue subject to terms and conditions any license, certificate, or approval issued under this chapter for any of the following causes:

\* \* \*

“(h) Gross negligence in his or her practice as a physical therapist.

“(i) Conviction of a violation of any of the provisions of this chapter or of the State Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter or of the State Medical Practice Act.

“(j) The aiding or abetting of any person to violate this chapter or any regulations duly adopted under this chapter.

“(k) The aiding or abetting of any person to engage in the unlawful practice of physical therapy.

“(l) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a physical therapist.”

5. Section 2630 of the Code states, in pertinent part:


“A physical therapist . . . may utilize the services of one aide engaged in patient-related tasks to assist the physical therapist in his or her practice of physical therapy. . . . The aide shall at all times be under the orders, directions, and immediate supervision of the physical therapist. . . . The physical therapist shall provide continuous and immediate supervision of the aide. The physical therapist shall be in the same facility as, and in proximity to, the location where the aide is performing patient-related tasks, and shall be readily available at all times to provide advice or instruction to the aide. When patient-related tasks are provided to a patient by an aide, the supervising physical therapist shall, at some point during the treatment day, provide direct service to the patient as treatment for the patient’s condition, or to further evaluate and monitor the patient’s progress, and shall correspondingly document

the patient's record.”



6. Section 2620.7 of the Code states:

“A physical therapist shall document his or her evaluation, goals, treatment plan, and summary of treatment in the patient record. Patient records shall be maintained for a period of no less than seven years following the discharge of the patient, except that the records of unemancipated minors shall be maintained at least one year after the minor has reached the age of 18 years, and not in any case less than seven years.”

7.  California Code of Regulations, title 16, section 1399, states in pertinent part:

“A physical therapy aide is an unlicensed person who assists a physical therapist and may be utilized by a physical therapist in his or her practice by performing nonpatient related tasks, or by performing patient related tasks.

“(a) As used in these regulations:

“(1) A ‘patient related task’ means a physical therapy service rendered directly to the patient by an aide, excluding nonpatient related tasks as defined below.

“(2) A ‘nonpatient related task’ means a task related to observation of the patient, transport of patients, physical support only during gait or transfer training, housekeeping duties, clerical duties and similar functions.

“(b) ‘Under the orders, direction and immediate supervision’ means:

“(1) Prior to the initiation of care, the physical therapist shall evaluate every patient prior to the performance of any patient related tasks by the aide. The evaluation shall be documented in the patient's record.


“(2) The physical therapist shall formulate and record in the patient's record a treatment program based upon the evaluation and any other information available to the physical therapist, and shall determine those patient related tasks which may be assigned to an aide. The patient's record shall reflect those patient related tasks that were rendered by the aide, including the signature of the aide who performed those tasks.

“(3) The physical therapist shall assign only those patient related tasks that can be safely and effectively performed by the aide. The supervising physical therapist shall be responsible at all times for the conduct of the aide while he or she is on duty.

“(4) The physical therapist shall provide continuous and immediate supervision of the aide. The physical therapist shall be in the same facility as and in immediate proximity to the location where the aide is performing patient related tasks, and shall be readily available at all times to provide advice or instruction to the aide. When patient related tasks are provided a patient by an aide the supervising physical therapist shall at some point during the treatment day provide direct service to the patient as treatment for the patient's condition or to further evaluate and monitor the patient's progress, and so document in the patient's record.

\* \* \*

“(6) The supervising physical therapist shall countersign with their first initial and last name, and date all entries in the patient's record, on the same day as patient related tasks were provided by the aide.”




Section 810 of the Code states in pertinent part:

“(a) It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license or certificate, for a health care professional to do any of the following in connection with his or her professional activities:

\* \* \*

“(2) Knowingly prepare, make, or subscribe any writing, with intent to present or use the same, or to allow it to be presented or used in support of any false or fraudulent claim.

“(b) It shall constitute cause for revocation or suspension of a license or certificate for a health care professional to engage in any conduct prohibited under Section 1871.4 of the Insurance Code or Section 550 of the Penal Code.”



Section 1871.4 of the Insurance Code states in pertinent part:

“(a) It is unlawful to do any of the following:


“(1) Make or cause to be made any knowingly false or fraudulent material statement or material representation for the purpose of obtaining or denying any compensation, as defined in Section 3207 of the Labor Code.


“(2) Present or cause to be presented any knowingly false or fraudulent written or oral material statement in support of, or in opposition to, any claim for compensation for the purpose of obtaining or denying any compensation, as defined in Section 3207 of the Labor Code.

“(3) Knowingly assist, abet, conspire with, or solicit any person in an unlawful act under this section.

\* \* \*

“For the purposes of this subdivision, ‘statement’ includes, but is not limited to, any notice, proof of injury, bill for services, payment for services, hospital or doctor records, X\_ray, test results, medical\_legal expense as defined in Section 4620 of the Labor Code, other evidence of loss, injury, or expense, or payment.”



10.  Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

**FIRST CAUSE FOR DISCIPLINE**

(Aiding and Abetting the Illegal Practice of

Physical Therapy When Utilizing an Aide)

11. Respondent is subject to disciplinary action under section 2660, subdivisions (i), (j), and (k), and section 2630, in conjunction with California Code of Regulations Title 16, section 1399, in that he aided and abetted the illegal practice of physical therapy in the use of an aide. The circumstances are as follows:

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A. With respect to N.A.<sup>1</sup>, the patient was treated by physical therapy aides employed by Respondent on numerous occasions between April 4, and September 28, 2000, and between January 2, and April 24, 2001, without direct treatment rendered by a licensed physical therapist.

B. With respect to J.C., the patient was treated by physical therapy aides employed by Respondent on numerous occasions between December 17, 1999 and June 30, 2000, and between February 12, and April 2, 2001, without direct treatment rendered by a licensed physical therapist.

C. With respect to N.S., the patient was treated by physical therapy aides employed by Respondent on numerous occasions between January 18, and April 26, 2001, without direct treatment rendered by a licensed physical therapist.

D. With respect to M.P., the patient was treated by physical therapy aides employed by Respondent on numerous occasions between January 3, and April 6, 2001, without direct treatment rendered by a licensed physical therapist.

E. With respect to A.N., the patient was treated by physical therapy aides employed by Respondent on numerous occasions between September 24, and November 24, 1999, without direct treatment rendered by a licensed physical therapist.

F. With respect to K.W., the patient was treated by physical therapy aides employed by Respondent on numerous occasions between November 12, 1999, and May 30, 2000, without direct treatment rendered by a licensed physical therapist.

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<sup>1</sup> All patients are referred to herein by their initials in order to protect their privacy. Their full names will be disclosed to Respondent upon a timely request for discovery.

G. As to all of the above-mentioned patients, Respondent failed to properly supervise physical therapy aides, failed to document treatment provided, and failed to sign charts in order to identify particular services provided, and by whom services were provided

- H. Respondent allowed two aides to render treatment outside the clinic without the supervision of a licensed physical therapist.

**SECOND CAUSE FOR DISCIPLINE**

(Aiding and Abetting the Practice of Over-Utilizing Physical Therapy Services)



12. Respondent is subject to disciplinary action under section 2660, subdivision (k), and 810, in conjunction with Insurance Code section 1871.4, in that Respondent aided and abetted in the practice of over-utilizing physical therapy services. The circumstances are as follows:

A. With respect to N.A., the patient was treated by physical therapy aides on numerous occasions between April 4, and September 28, 2000, and between January 2, and April 24, 2001, without significant progress.

B. With respect to J.C., the patient was treated by physical therapy aides on numerous occasions between December 17, 1999 and June 30, 2000, and between February 12, and April 2, 2001, without significant progress.

C. With respect to N.S., the patient was treated by physical therapy aides on numerous occasions between January 18, and April 26, 2001, without significant progress.

D. With respect to M.P., the patient was treated by physical therapy aides on numerous occasions between January 3, and April 6, 2001, without significant progress.

E. With respect to A.N., the patient was treated by physical therapy aides on numerous occasions between September 24, and November 24, 1999, without significant progress.

F. With respect to K.W., the patient was treated by physical therapy aides on numerous occasions between November 12, 1999, and May 30, 2000, without significant progress.

G. All patients referred to in paragraphs 12A-F were billed for extensive exercise and treatment programs.

### **THIRD CAUSE FOR DISCIPLINE**

(Unprofessional Conduct/Presenting False Statements)

13. Respondent is subject to disciplinary action under section 810, in conjunction with Insurance Code section 1871.4, in that Respondent presented false statements to insurance carriers and others, for compensation. The circumstances are as follows:

A. With respect to patient L.C., Respondent charged for physical therapy services in July, August and September, 1999, when L.C. was not on the premises and did not receive any physical therapy services.

B. With respect to patient R.F., Respondent charged for physical therapy services in February, March and April, 1999, when R.F. was not on the premises and did not receive any physical therapy services.

C. With respect to patient B.K., Respondent charged for physical therapy services in July, August, September, October, November, and December, 1997, and January 1998, when B.K. was not on the premises and did not receive any physical therapy services.

D. With respect to patient B.G., Respondent charged for physical therapy services in June, July, and September, 1998, when B.G. was not on the premises and did not receive any physical therapy services.

E. With respect to patient N.C., Respondent charged over 30 times in 2000, for use of physical therapy equipment that he did not own.

F. With respect to patient S.L., Respondent charged six times, in June of 2000, for use of physical therapy equipment which Respondent did not possess.

G. With respect to patients L.C., B.K., B.G., N.C., L.M., and S.L., Respondent charged for physical therapy services which were not recorded on the patients' charts or records.

H. With respect to patients N.A., J.C., N.S., M.P., A.N., and K.W., Respondent billed for services which were not provided.

**FOURTH CAUSE FOR DISCIPLINE**

(Gross Negligence)

14. Respondent is subject to disciplinary action under section 2660, subsection (h), in that Respondent engaged in extreme departures from the standard of care with respect to his treatment of numerous patients. The circumstances are as follows:

15. Complainant repeats Paragraphs 11A-H, 12 A-F, and 13A-H, as though fully set forth herein.

**FIFTH CAUSE FOR DISCIPLINE**

(Fraudulent, Dishonest or Corrupt Acts)

16. Respondent is subject to disciplinary action under section 2660, subsections (i), (j) and (l), in that Respondent committed fraudulent, dishonest or corrupt acts with respect to rendering physical therapy to patients. The circumstances are as follows:

17. Complainant repeats Paragraphs 11A-G, 12 A-G, and 13A-H, as though fully set forth herein.

**SIXTH CAUSE FOR DISCIPLINE**

(Failure to Document Treatment)

18. Respondent is subject to disciplinary action under 2620.7, in conjunction with California Code of Regulations, Title 16, section 1399, in that he failed to keep proper records of physical therapy treatments that he rendered to patients L.C., B.G., B.K., N.C., L.M., S.L., N.A., J.C., N.S., M.P., A.N., and K.W.

**PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Physical Therapy Board of California issue a decision:

1. Revoking or suspending Physical Therapist License Number PT 10374, issued to Robert Frank Forster;

2. Ordering Robert Frank Forster to pay the Physical Therapy Board of California the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 2661.5;

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3. Taking such other and further action as deemed necessary and proper.

DATED: 09/06/02

Original Signed By

STEVEN K. HARTZELL

Executive Officer

Physical Therapy Board of California

Department of Consumer Affairs

State of California

Complainant



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